



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 28, 1998

Mr. S. Anthony Safi  
Mounce, Green, Myers, Safi & Galatzan  
P.O. Box 1977  
El Paso, Texas 79950-1977

OR98-1328

Dear Mr. Safi:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115440.

The El Paso Independent School District (the "school district") received a request for information "regarding negotiations with the school board and superintendent Dr. Stan Paz, over his departure from [the school district], and specifically what he requested in order to leave the district." You claim that the requested information is excepted from disclosure under sections 552.102 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note your concern that the documents at issue were discussed in a closed meeting pursuant to section 551.074 of the Government Code. The fact that a document was discussed in an executive session of a governmental entity subject to the Open Meetings Act does not make that document confidential under the Open Records Act. Open Records Decision No. 485 (1987) at 9-10.

We now address your claimed exceptions. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This exception applies not only to a governmental body's internal memoranda, but also to memoranda prepared for a governmental body by its outside consultant. Open Records Decision Nos. 462 (1987) at 14, 298 (1981) at 2. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body.

An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. The documents here merely relate to a routine personnel matter. Section 552.111, therefore, does not except these records from required public disclosure.

Section 552.102(a) of the Government Code is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. See Open Records Decision No. 336 (1982). See also Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy (1) if the information contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person, and (2) if the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Employee privacy under section 552.102(a) is less broad than common law privacy under section 552.101 because of the greater public interest in disclosure of information regarding public employees. Open Records Decision Nos. 269 (1981), 169 (1977). This office has held that section 552.102(a) may be invoked only when information reveals "intimate details of a highly personal nature." Open Records Decision Nos. 315 (1982), 298 (1981), 284 (1981), 269 (1981), 224 (1979), 169 (1977). None of the information you have submitted comports with this standard, but rather pertains solely to the employee's qualifications as a public servant, and as such cannot be deemed to be outside the realm of public interest. See Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Therefore, you may not withhold the requested information under section 552.102.

Finally, we note that a small portion of the information at issue may be protected from disclosure under section 552.117. Section 552.117(1) of the Government Code requires that the school district withhold its employees' home address, home telephone number, social security number, and any information revealing whether the employee has family members, but only if the employee has elected to keep this information confidential in accordance with section 552.024 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous

determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/alg

Ref.: ID# 115440

Enclosures: Submitted documents

cc: Mr. Zoltan Csanyi-Salcedo  
News Director  
26 KINT-TV  
5425 N. Mesa  
El Paso, Texas 79912  
(w/o enclosures)